

(41)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

M.A. No.357 of 2006

APPELLANTS
CLAIMANTS

1. Smt. Kamla Brijwasi,
W/o Late Ramfal Brijwasi,
Aged about 36 years
2. Ku. Sandhya Brijwasi,
D/o Late Ramfal Brijwasi,
Aged about 15 years
3. Somal Brijwasi,
S/o. Late Ramfal Brijwasi,
Aged about 6 years

Appellant nos. 2 to 4 are minors through their natural guardian Mother Smt. Kamla Brijwasi, W/o Late Ramfal Brijwasi, R/op Village – Telsara, Police Station – Chakarbhata, District – Bilaspur, (C.G.).

VERSUS

RESPONDENTS

1. Aashutosh Sharma,
Aged about 23 years,
S/o Rajendra Kumar Sharma,
R/o – Kaya, P.O. – Senwaar,
District – Bilaspur, (C.G.)
2. Anand Kumar Sharma,
S/o Rajendra Kumar Sharma,
R/o – Kaya, P.O. – Senwaar,
District – Bilaspur, (C.G.)
3. Bajaj Allianz Insurance Company Limited, Shiv Bhavan,
Jeevan Bhima Marg,
Vidhan Sabha Road,
Pandari Raipur,
Tahsil & District – Raipur, (C.G.)

Present: Shri Bhupendra Singh, learned counsel for the appellants.

ORAL ORDER
(Passed on 01st August, 2006)

The following oral order of the Court was passed by
S.R. NAYAK, C.J.

In a death case, the widow and the children of the deceased not being satisfied with the quantum of compensation awarded by the MACT, have preferred this appeal under Section 173 of the Motor Vehicles Act 1988 (for short "the Act") for more compensation.

2. Learned counsel appearing for the appellants would contend that the deceased was a carpenter and he was earning monthly income of Rs.6,000/-, whereas the MACT has taken his income at the rate of Rs.3,000/- per month and on that basis, assessed the loss of dependency. It was also contended that what has been awarded towards 'loss of love and affection for children' and 'loss of consortium to the widow' is on lower side. It was also contended that the MACT ought to have awarded more compensation towards medical treatment of the deceased before he expired.

3. Having heard the learned counsel for the appellants and having perused the impugned award and other materials appended to the appeal, we do not find any substantive ground to entertain this appeal and we are of the considered opinion that cumulatively what has been awarded by the MACT, in the facts and circumstances of the case and evidence on record, is a just and reasonable compensation contemplated under the Act.

4. Although, it was claimed that the monthly income of the deceased was Rs.6,000/-, that plea remains as a plea only without substantiation by adducing any legal evidence. Except self-serving testimony of the widow that the deceased was earning monthly income

of Rs.6,000/-, there is no iota of substantive independent legal evidence to support that plea. In the absence of such evidence, we cannot take any exception to the impugned award taking the income of the deceased at the rate of Rs.3,000/- per month for the purpose assessing loss of dependency. There is also no merit in the submission that the MACT ought to have awarded more compensation towards medical expenses incurred by the family of the deceased before he expired. The impugned award would disclose that the claimants have produced the bills for Rs.1,43,844.89/- only, whereas the MACT has awarded a sum of Rs.1,47,844.89/- adding Rs.4,000/- towards special diet etc. The MACT has awarded sum of Rs.5,000/- towards loss of consortium, sum of Rs.15,000/- towards loss of love and affection, sum of Rs.5,000/- towards funeral expenses and sum of Rs.2,500/- towards loss of estate. Thus, it has awarded total compensation of Rs.5,59,344.89/-. The appeal is devoid of merit and it is accordingly dismissed at the stage of admission without notice to the other side.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subm